

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

CSP NO 538 OF 2017

AND

CSP NO 536 OF 2017

AND

CSP NO 535 OF 2017

RUSTOMJEE CONSTRUCTIONS PRIVATE LIMITED

...First Transferor /Petitioner Company

YAZARINA ESTATES & INVESTMENTS PRIVATE LIMITED

...Second Transferor /Petitioner Company

KEYSTONE REALTORS PRIVATE LIMITED

...Transferee /Petitioner Company

In the matter of the Companies Act, 2013

And

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

And

In the matter of Scheme of Amalgamation of Rustomjee Constructions Private Limited ('the First Transferor Company') and Yazarina Estates & Investments Private Limited ('the Second Transferor Company') with Keystone Realtors Private Limited ('the Transferee Company') and their respective Shareholders

Order delivered on 14TH September, 2017

Coram:

Hon'ble SH. B.S.V. Prakash Kumar, Member (J),

Hon'ble SH V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioner.

Per: SH. B.S.V. Prakash Kumar, Member (J)

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Rustomjee Constructions Private

Limited and Yazarina Estates & Investments Private Limited with Keystone Realtors Private Limited and their respective Shareholders.

3. Learned counsel for the Petitioners states that the First Transferor Company and Second Transferor Company are primarily engaged in the business of real estate development. Upon the sanction of the Scheme of Amalgamation, the business of the First transferor Company and Second Transferor Company will be merged in the Transferee Company.
4. Learned counsel for the Petitioners further states that the scheme envisages the amalgamation of the First Transferor Company and Second Transferor Company with the Transferee Company should have the following benefits: (a) Integration of operation resulting in synergies and rationalization of administrative and operating costs and (b) consolidation of 100% subsidiary companies.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing respective Board Resolution which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 227 of 2017 and 349 of 2017 of the Hon'ble Tribunal.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
8. Pursuant to filing of the Company Scheme Application to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report dated 22nd August,

2017 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

- a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as (IND AS-8) etc.*
- b) *Regarding Clause 10 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account of the Transferee Company .*
- c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 4th May, 2017 has served a copy Company Scheme Application No. 227 & 349 of 2017 along with relevant orders etc., further this office has also issued a reminder 18/08/2017.*
- d) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- e) *As per **Clause 1.2, Definitions of the scheme. "The Appointed Date"** means the **1st day of January 2017** or such other date as may be fixed or approved by the National Company Law Tribunal or any other competent authority may otherwise direct/fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1st day of January 2017**.*
- f) *In view of observation of ROC Mumbai, mentioned at para 11 above Hon'ble Tribunal may kindly direct each of the companies involved in the scheme to file*

solvency certificate with Registrar of Companies, Mumbai, as required u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.

g) Both the Transferor Companies are in the Real Estate Development business. Hence, they may be directed to clarify the applicability of Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulation 2017.

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Transferee Company through its Counsel undertakes that in addition to accounting treatment given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Counsel for Petitioners submits that the petitioners are adopting AS-14 (Pooling of Interests Method). In terms of Paragraph 16 of AS-14, the difference if any arising between the amount recorded as share capital issued and the amount of the share capital of the transferor company is required to be adjusted in the reserves of the financial statement of the transferee company, therefore the same cannot be debited to Goodwill account. The Counsel for petitioners further clarify such a situation is envisaged only if the company adopts AS-14 (Purchase method) i.e. if amalgamation is in the nature of purchase. Further, the statutory auditor of the Transferee Company has issued a certificate as required under section 133 of the Companies Act, 2013 that the accounting treatment in clause 10 of the scheme is in compliance with the applicable accounting standards.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) & (d) of his report is concerned, the Petitioners submit that the Petitioners undertake that they shall comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Petitioner Companies confirms that in terms of provisions of section 232(6) of the Companies Act, 2013 the Appointed Date for the Scheme of Amalgamation shall be 1st January, 2017
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned the Counsel for the Petitioners has tendered copy of Solvency Certificate, therefore the objection of the Regional Director does not survive.
14. As far as the observation of the Regional Director as stated in paragraph IV (g) of his report is concerned, the Petitioners through their Counsel submit that the Real Estate (Regulation and Development) Act, 2016 (RERA) was notified on 1st May, 2017 and the compliance for registration under RERA was required to be done by 31st July, 2017. The only requirement under RERA was to register the projects undertaken by the Transferor Companies which has been complied with. Further, the Transferee Company undertakes to comply with all the regulations of RERA read with Maharashtra Rules and Regulations 2017, as may be applicable.
15. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, have been explained by the Petitioner Companies in Para 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
16. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 535, 536 and 538 of 2017 are made absolute in terms of prayer clauses (a) to (b).
18. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.
19. The Transferee Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, within a period of 60 days from the date of receipt of the order.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
21. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)